No. 14546.

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

OTTO K. OLESEN, individually and as Postmaster of the City of Los Angeles, State of California,

Appellant,

vs.

V. E. STANARD, individually and doing business as MALE MERCHANDISE MART,

Appellee.

BRIEF FOR APPELLEE.

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BRIEF FOR APPELLEE.

Counterstatement of the Case.

The appellant's statement of the case is confusing, incomplete and inaccurate and a counterstatement is therefore essential. Appellee, V. E. Stanard, is engaged in the business of distributing and selling through the mail certain publications, pin-up pictures and novelties under the firm name and style of Male Merchandise Mart. On March 1, 1954, the Solicitor of the Post Office Department issued a complaint against plaintiff charging that she was carrying on, by means of the Post Office, a scheme for obtaining money for articles of an obscene character. On March 1, 1954, without notice or hearing

and before there had been any determination of illegal activity on the part of appellee, appellant Otto K. Olesen, under orders of the Deputy Postmaster General, impounded and refused to deliver to appellee any mail addressed to her [T. R. 60]. Appellee answered the Solicitor's complaint and denied the charge. On March 10, 1954, a hearing was held in Washington, D. C. None of the books, motion picture films, playing cards, color slides or other items described in the complaint as being obscene were offered or received in evidence. Circulars mailed by the plaintiff were offered in evidence in the said administrative hearing, but it was not charged or found that the circulars themselves were obscene. "It is not contended by appellant that the circulars themselves are obscene . . ." (Appellant's Op. Br. p. 10). On April 30, 1954, the Hearing Examiner filed his initial decision and found that appellee was selling or attempting to sell obscene books, motion pictures, playing cards and other items described in the complaint. On June 11, 1954, the Deputy Postmaster General issued a decision affirming and adopting the initial decision of the Hearing Examiner, and on the same day the Deputy Postmaster General issued an order addressed to appellant, Otto K. Olesen, directing him to return to the senders all mail matter addressed to the appellee with the word "Unlawful" written or stamped on the outside thereof [T. R. 60-61]. From March 1, 1954 to June 11, 1954, appellant refused to deliver to appellee her mail pursuant to the impound order of March 1, 1954. From June 11 to August 16, 1954, appellant refused to deliver to appellee her mail pursuant to the final administrative order of June 11, 1954.

The District Judge found that there was no evidence in the administrative hearing that any of the materials sold or offered for sale by appellee was obscene, lewd, lascivious, indecent, filthy or vile [T. R. 61]. He, therefore, held the final order of June 11, 1954 invalid and void for the reason that it was unsupported by substantial or any evidence and was arbitrary, capricious and an abuse of discretion and not in accordance with law [T. R. 62]. He also held invalid the impound order dated March 1, 1954 for the reason that there was no authority for the issuance of such an order without notice or hearing.

Questions Presented.

1. Does the Postmaster General have the power to issue an order without notice or hearing withholding from the appellee her mail.

(a) In the face of the due process clause of the Fifth Amendment?

(b) In the face of the Administrative Procedure Act?

2. Can the Post Office Department, consistently with the Administrative Procedure Act, find that appellee is mailing obscene matter when the Hearing Examiner has not even seen the matter or taken evidence regarding the contents thereof and where there is no claim that the circulars advertising the same are obscene?

The constitutionality of 39 U. S. C. A. Sec. 259a is not here put in question because the District Court refrained from considering that issue.

ARGUMENT.

I.

The Postmaster General Was Without Power to Issue the Impound Order.

A. The Due Process Clause of the Fifth Amendment.

About a year ago, Mr. Justice Douglas considered the entire problem raised in this case in *Stanard v. Olesen,* 74 S. Ct. 768. The decision is so apt that it is attached hereto as an appendix. In his decision Mr. Justice Douglas said:

> "The power of the Post Office Department to exclude materials from the mails and to intercept mail addressed to a person or a business is a power that touches basic freedoms. It might even have the effect of a prior restraint on communication in violation of the First Amendment, or the infliction of punishment without the due process of law which the Fifth and Sixth Amendments guarantee."

In *Walker, Postmaster General v. Popenoe,* 149 F. 2d 511, Mr. Justice Arnold, concurring and speaking for the court, pointed out that to deprive a person of the use of the mails is like preventing a seller of goods from using the principal highways which connect him with his market, and held that a full and fair hearing is a condition precedent to any interference with the use of the mails. Of particular significance to the case at bar is the following paragraph from Mr. Justice Arnold's opinion:

> "We are not impressed with the argument that a rule requiring a hearing before mailing privileges are suspended would permit, while the hearing was going on, the distribution of publications intention-

ally obscene in plain defiance of every reasonable standard. In such a case the effective remedy is the immediate arrest of the offender for the crime penalized by this statute. Such action would prevent any form of distribution of the obscene material by mail or otherwise. If the offender were released on bail, the condition of that bail should be a sufficient protection against repetition of the offense before trial. But often mailing privileges are revoked in cases where the prosecuting officers are not sure enough to risk criminal prosecution. That was the situation here. Appellants have been prevented for a long period of time from mailing a publicatoin which we now find contains nothing offensive to current standards of public decency. A full hearing is the minimum protection required by due process to prevent that kind of injury."

In a law review note (28 Vir. L. Rev. 635) entitled "The Postal Power and its Limitations on Freedom of the Press" is quoted a part of a letter from Mr. Justice Holmes to Sir Frederick Pollock, which reads as follows:

> "The Postmaster General stops letters and circulars that he (*i. e.,* generally I suppose some understaffer) decides to be fraudulent, etc., the Constitution forbids any law abridging the freedom of speech and I can't believe that this stoppage is lawful. I think in fact that it has been an instrument of tyranny and used to stop communications that would seem all right to a different mode of thought."

In *Joint Anti-Fascist Refugee Committee v. McGrath,* 341 U. S. 123, the Supreme Court struck down an administrative order which was made without notice or hearing

on the ground that it did not proceed with due process of law. In that case Mr. Justice Douglas said:

> "It is procedure that spells much of the difference between rule by law and rule by whim and caprice."

And Mr. Justice Frankfurter observed that:

> "The heart of the matter is that democracy implies respect for the elementary rights of men, however suspect or unworthy; a democratic government must therefore protect fairness, and fairness can rarely be obtained by secret one-sided determination of facts decisive of rights."

B. The Administrative Procedure Act.

For many years it has been settled law that the Post Office Department has no power to impound mail pending administrative hearing.

> *Donnell Mfg. Co. v. Wyman,* 156 Fed. 415;
> *Myers v. Cheeseman,* 174 Fed. 783.

In the *Donnell* case, the court said:

> "If the Postmaster General . . . had the authority to withhold complainant's mail for six weeks of time it was by reason of some statute. And on the hearing in this court counsel for the government was wholly unable to present such a statute for consideration, and the most diligent search by the court has been with the same results. Apparently it can be said that there is no such statute and therefore no such authority exists."

In *Stanard v. Olesen, supra,* Mr. Justice Douglas said:

> ". . . I find no statutory authority of the Post Office Department to impound mail *without a hearing and before there has been any final determination of illegal activity.*" (Emphasis in original.)

It is also settled law that the Post Office Department must proceed in accordance with the provisions of the Administrative Procedure Act.

Cates v. Haderlein, 342 U. S. 804;

Door v. Donaldson, 195 F. 2d 764;

Stanard v. Olesen, supra.

In the *Stanard* case Mr. Justice Douglas said:

> "Under the laws presently written, every business, until found unlawful, has the right to be left alone."

The Administrative Procedure Act (5 U. S. C. Sec. 1001 *et seq.*) provides that no sanction shall be imposed except within jurisdiction delegated to the agency and as authorized by law.

As Mr. Justice Douglas said in the *Stanard v. Olesen* case:

> "Impounding one's mail is plainly a 'sanction' for it may as effectively close down an establishment as the sheriff himself. The power to impound at the commencement of the administrative proceedings is not expressly delegated to the Post Office, as I have said. It carries such a grave threat, it touches so close to First, Fifth and Sixth Amendment rights, it has such serious possibilites of abuse (unless carefully restricted) that I am reluctant to read it into the statute. I, therefore, strongly incline to the view that the interim order from which petitioner seeks relief is invalid."

The cases cited by appellant in his brief (p. 10) and the policy arguments urged were considered and rejected by Mr. Justice Douglas in *Stanard v. Olesen, supra.* He pointed out that legislation has been introduced, but

not passed, to give the Post Office Department the power it here claims. H. R. 569, 83d Cong., 1st Sess. He then observed that:

> "The history of that bill and of related legislations does not show any awareness that the power proposed already exists. See H. R. Rep. No. 850, 83d Cong., 1st Sess.; H. R. Rep. No. 1874, 82d Cong., 2d Sess.; H. R. Rep. No. 2510, 82d Cong., 2d Sess."

II.

The Final Order of the Postmaster General Is Not Supported by Substantial or Any Evidence.

The appellee was found by the Post Office Department to be selling or attempting to sell obscene matter through the mail. This in spite of the fact that none of the matter mailed by appellee was introduced into evidence. The theory of the agency as set forth in the initial decision is that:

> ". . . the circulars themselves constitute persuasive evidence that respondent will furnish obscenity to persons induced by the descriptive technique employed therein to order the books, pictures, playing cards and other materials offered for sale. If these circular advertisements promise obscenity, as I hold they do, it is not unfair to hold the advertiser bound by his advertising. *If the materials, as actually furnished, are in fact innocuous and non-obscene,* the advertiser should have only himself to blame for going to such extreme lengths, as is done in these circulars, to persuade his addressees to the opposite impression. Thus, the effect of these circulars is to bring this enterprise, *prima facie* at least, within the inhibition of the postal obscenity statute. Respondent did not elect to present evidence to rebut

the promise of obscenity so clearly and unmistakably spelled out in the advertising circulars. I hold that the advertising circulars constitute substantial evidence of sale or attempted sale of obscene books, motion pictures, playing cards and other items mentioned in the complaint. . . ." [Emphasis added; T. R. 16-17.]

The reason why the Post Office Department saw fit not to introduce the material mailed by appellee is suggested in the following testimony given before the Select Committee on Current Pornographic Material, House Report 2510, 82d Cong., 2d Sess., page 95:

"Mr. Burton: Is there any other typical case that you think would be of interest to the Committee? You have described your operations so very clearly here—

Mr. Simon: Well we have cases where they give the impression that they, from the literature you get the impression that they, are selling obscene matter, but when the material is received it turns out to be *innocuous,* and several of these cases have resulted in the issuance of fraud orders. That type of case gives us considerable trouble, along with the borderline material.

Mr. Burton: That is the type that you call fake advertising?

Mr. Simon: Fake obscene." (Emphasis added.)

In the course of the same hearing, then Solicitor Frank testified as follows, on pages 94-95:

". . . Sometimes you can get five people together with you and can give them five pieces of mail, and ask them to mark them, and you will get five different results, because in some cases it is just

one of those things that depends on your own personal ideas and your own bringing up; it depends on how strongly you feel about things and there are some types of that material that you just can't get two people to agree on no matter how reasonably and how objectively they look upon it. It is just an honest difference of opinion. We experience it all the time, so we have our conferences, and we decide what is going to be the best thing to do.

Mr. Burton: These cases are frequently called your borderline cases are they not?

Mr. Frank: Borderline cases that is right and I may say there are many of them, Mr. Counsel.

Mr. Keefe: In mentioning borderline if I may just inject here, I think that is the group that, without any doubt, gives us the most complaint, give us the most trouble, because the real pornographic material is not specifically advertised, as we mentioned before, but the man who floods the mails with these ads, he is dealing many times with an article that he knows is going to cause a lot of trouble, I mean trouble in deciding on it, and very difficult of a criminal prosecution, and those are the things, I think, all the way along, that we are having our great trouble with.

"We have no trouble with prosecution on things that are definitely obscene, but it is this material that is this way and that way that is very, very difficult to prosecute."

The trial court discussed the evidence question as follows [T. R. 57-58]:

"No evidence of any kind was offered or received before the Post Office Department to support the conclusion that the matter for which the use of the mail was forbidden by the order, is within the

> prohibition of the statute; none of such matter was offered or received. The circulars advertising the material were the only things received, and they are specifically found not to be within the prohibited terms of obscenity, etc., of the statute. For the Solicitor of the Post Office Department and the Postmaster General to find that something is obscene, lewd, lascivious, indecent, filthy or vile without even seeing it or a copy or a facsimile of it, contemplates that Congress intended that the right to use the mails should be subject to some government administrator's power of divination or clairvoyance. Such powers are not recognized in any act of Congress I have ever seen. Chief Justice Hughes in United States v. MacIntosh, 283 U. S. 605, spoke of departmental zeal outrunning statutory authority. I have seen many examples of it, but none so arbitrary as the instant order."

Before the statute, Section 259a, could become operative, the Post Office Department would have to find that appellee was mailing obscene matter. Section 7(c) of the Administrative Procedure Act (5 U. S. C. A. Sec. 1001 *et seq.*) provides that "The proponent of a . . . order shall have the burden of proof." As observed above, the administrative agency never examined the matter which it found to be obscene and conceded that the matter might in fact be "innocuous and non-obscene." [T. R. 16-17]. In order to bridge the gap, the Post Office Department *presumed* that the matter was obscene. If the appellee was mailing obscene matter, she was guilty of a crime (18 U. S. C., Sec. 1461). There is no presumption that a person violates the law; quite the contrary the presumption is that a person is free of wrongdoing (Code Civ. Proc. 1963). It is just as erroneous to presume that

a person is sending obscene matter through the mail as it is to presume that a person is guilty of a fraud. (See *Jeffries v. Olesen,* 121 Fed. Supp. 463; *The Atlanta Corp. v. Olesen,* 124 Fed. Supp. 482.)

Appellant argues in his brief (p. 10)

> "That questions of fact, when decided by an administrative agency, must be affirmed by the District Court when supported by substantial evidence."

These findings, however, are of course subject to judicial review.

United States v. Morton, 338 U. S. 632;

Universal Camera Corp. v. National Labor Relations Board, 340 U. S. 474;

Bonica v. Olesen, 126 Fed. Supp. 398.

In the case at bar the administrative agency found that the appellee was mailing obscene matter, without ever having seen the matter it declared obscene. The District Court properly found that there was no evidence to support the finding that the appellee was mailing obscene matter [T. R. 61].

In *Bonica v. Olesen,* 126 Fed. Supp. 398, the judge said:

> "It appears that the only controverted issue with the administrative level was whether or not the films were 'obsecene, lewd or lascivious' and that the only evidence on this crucial question was the films themselves."

The court then went on to describe the films and concluded that the Post Office was in error in finding them obscene, saying:

> "The Post Office has labeled these movements 'sexually suggestive.' To so conclude would be to

classify the great bulk of modern dancing as such. This court cannot conclude that this is the community consensus."

In the case at bar, how can this or any court pass judgment on whether or not the appellee was mailing obscene matter. The matter is not before the court and it is not before the court because the Post Office Department saw fit not to introduce it. Under the circumstances, the trial court's finding is conclusive.

A recent helpful case is *Summerfield v. Sunshine Book Co.,* 23 Law. Week 2285 (Dec. 16, 1954, Ct. of App. for the Dist. of Col., not yet officially reported). In that case the court said:

> "It may perhaps be argued that the sweeping orders here involved should be upheld—contrary to all the inferences to be drawn from The Reed Magazine case—on the ground that from past unlawful conduct of (publications) as the Postmaster General sees it, he may conclude that such conduct will continue and that he will again have cause to find future issues of the magazine obscene. But there is and can be no finding now that any particular future issue of the . . . magazines will be obscene and will provide a basis for the sanctions which the Postmaster General may impose under Section 259a. To let the present order stand would permit the Postmaster General to prevent—in practical effect—the continued publication of a magazine without any advance knowledge that its future issues will be in violation of law, and thus to suppress putatively lawful activities. Grave constitutional questions would then be presented." (See also *Reilly v. Pincus,* 338 U. S. 269.)

As if there were something wrong with sex, the appellant argues in his brief (p. 11):

> ". . . Appellee offers to send to the reader of the circular any number of hundreds of books and pictures, all of which deal with the subject of sex, and each of which is promised to give the recipient thereof a 'thrill'."

Much as the Post Office Department would like to abolish sex, it is here to stay and judicially accepted.

Hannagan v. Esquire, Inc., 327 U. S. 146;
State v. Lerner, 81 N. E. 2d 282;
Commonwealth v. Gordon, 166 Pa. Sup. 120;
Bantam Books v. Melko, 96 A. 2d 42;
American Museum of Natural History v. Keenan, 89 A. 2d 98;
Parmelee v. United States, 113 F. 2d 729;
Le Baron v. Olesen, 125 Fed. Supp. 53.

An eloquent judicial tribute to sex is found in *State v. Lerner,* 81 N. E. 2d 282, 286:

> "Pure normal sex ideas are all right. All of mankind have sex ideas. Nature is aflame with sex ideas—the hoot of the owl, the coo of the dove, the blossoms of the flowers, plants and trees, the spawning of the fish. Sex is the why and wherefore of life and living."

Conclusion.

The decision of the District Court should be affirmed on both grounds.

Respectfully submitted,

Brock, Easton & Fleishman,
By Stanley Fleishman,
Attorneys for Appellee.

APPENDIX.

IN THE

Supreme Court of the United States

October Term, 1953

No. .....

V. E. STANARD, Individually and Doing Business Under the Firm Name and Style of MALE MERCHANDISE MART,

Appellant,

vs.

OTTO K. OLESEN, Individually and as Postmaster of the City of Los Angeles, State of California; and DOE I Through DOE IV,

Appellees.

Application to Mr. Justice Douglas for Relief From Post Office Department Impound Order Pending Appeal; or in the Alternative for an Injunction Pending Appeal. [May 22, 1954.]

OPINION OF MR. JUSTICE DOUGLAS.

Petitioner operates her business in Hollywood, California, under the fictitious name "Male Merchandise Mart," which has been duly recorded with the state authorities. Her business is selling and distributing through the mails "publications, 'pin-up' pictures and novelties." On March 1, 1954, the Solicitor for the Post Office Department issued a complaint against her, charging that she was carrying on, by means of the Post Office, a scheme for

obtaining money for articles of an obscene character; and further charging that she was depositing in the mails information as to where such articles could be obtained, all in violation of 39 U. S. C., §§255 and 259(a), 18 U. S. C., §§1342 and 1461.

On the same day on which the complaint issued, the Deputy Postmaster General ordered the Postmaster at Los Angeles, California, to refuse to deliver mail addressed to petitioner at her business address. The order stated that a complaint of unlawful use of the mails had been filed, that a hearing would be held to establish whether there were any violations of the applicable statutes, and that the mail addressed to petitioner should be impounded until further order. This order is now in effect. It was issued without notice or hearing.

Petitioner answered the complaint and a hearing was held in Washington, D. C., in March, 1954. At the present time, there has been no final adjudication, administrative or otherwise, that petitioner has violated any statute.

On March 19, 1954, petitioner filed an action for declaratory relief in the District Court for the Southern District of California. She alleged that the Post Office had no power to impound her mail without a hearing, that she was suffering irreparable injury, and that her constitutional rights had been violated. She sought a decree enjoining the so-called impound order, hereinafter referred to as the interim order, and any other order which might be entered by the Post Office, pursuant to the hearing. The District Court dismissed the complaint, holding that the Post Office had power to impound petitioner's mail pending the administrative determination,

and that petitioner could not question the administrative proceeding itself, because she had not exhausted her administrative remedies. Petitioner appealed to the Court of Appeals for the Ninth Circuit, where the appeal is now pending. She also made a motion for relief from the interim order, pending review. The Court of Appeals heard argument on the motion and took it under submission, but then vacated the submission and ordered the motion held in abeyance until June 15, 1954, to permit the Post Office Department to make a final and judicially reviewable order. The court stated that it was of the opinion that the motion should not be acted upon at that time.

Petitioner has now applied to me as Circuit Justice for relief from the interim order, until her appeal has been heard or the matter has been otherwise determined. I have heard the parties and have examined the papers presented. No question has been raised as to the power of a Circuit Justice to grant the relief requested, and I will assume that such power exists. *Cf.* Mr. Justice Reed's opinion in Twentieth Century Airlines v. Ryan, 74 Sup. Ct. 8, 98 L. Ed. 29. See also 5 U. S. C. §1009(d). I am not asked to interfere in any way with the administrative proceeding which is now being conducted. That proceeding is authorized by 39 U. S. C. §§255 and 259(a). If the administrative decision is adverse to petitioner, the Post Office will have statutory authority to intercept all mail addressed to her and either send it to the "dead-letter" office, or return it to the senders marked "Unlawful." Petitioner may have judicial review of any order entered under those statutes in an action brought after the administrative adjudication, if not in the case which is now pending in the Court of

Appeals. In the present application petitioner complains only of the interim order under which her mail is being intercepted while the administrative proceeding is being conducted. She complains that the interim order was entered without notice, without a hearing, and without any authority in law, statutory or otherwise.

The power of the Post Office Department to exclude material from the mails and to intercept mail addressed to a person or a business is a power that touches basic freedoms. It might even have the effect of a prior restraint on communication in violation of the First Amendment, or the infliction of punishment without the due process of law which the Fifth and the Sixth Amendments guarantee. See the dissents of Mr. Justice Holmes and Mr. Justice Brandeis in Leach v. Carlile, 258 U. S. 138, 140, and Milwaukee Publishing Co. v. Burleson, 255 U. S. 407, 417, 436; *cf.* Hannegan v. Esquire, Inc., 327 U. S. 146. I mention the constitutional implications of the problem only to emphasize that the power to impound mail should not be lightly implied. Yet if this power exists, it is an implied one. For I find no statutory authority of the Post Office Department to impound mail *without a hearing and before there has been any final determination of illegal activity.*

Nearly fifty years ago a district court held that there was no such statutory power, see Donnell Mfg. Co. v. Wyman, 156 F. 415. And see Myers v. Cheeseman, 174 F. 783. It has been held that the exercise of a like power without a hearing violated the Due Process Clause of the Fifth Amendment. Walker v. Popenoe, 80 U. S. App. D. C. 129, 131, 149 F. 2d 511, 513. A manual, published by the Post Office Department in 1939, stated that

there was no such power. See U. S. Post Office Department, Postal Decision, 328. A bill now pending in Congress would give such power, with certain judicial safeguards. H. R. 569, 83rd Cong., 1st Sess. The history of that bill and of related legislation does not show any awareness that the power proposed already exists. See H. R. Rep. No. 850, 83rd Cong., 1st Sess.; H. R. Rep. No. 1874, 82d Cong., 2d Sess.; H. R. Rep. No. 2510, 82d Cong., 2d Sess.

The Department of Justice has presented strong policy arguments (both to the Congress and to the courts) that the power is necessary. Within the past year four district courts have accepted those arguments, including the District Court which passed on this case. For the reported decisions, see Williams v. Petty, 4 Pike & Fischer Admin. Law 2d 203; Barel v. Fiske, 4 Pike & Fischer Admin. Law 2d 207. There is something to be said on the side of the law enforcement officials. For if an illicit business can continue while the administrative hearings are under way, those who operate on a fly-by-night basis may be able to stay one jump ahead of the law. Yet it is for Congress, not the courts, to write the law. Under the law, as presently written, every business, until found unlawful, has the right to be let alone. The Administrative Procedure Act, 60 Stat. 237, 5 U. S. C. §1001 *et seq.*, gives some protection to that right. The power of the Post office Department to restrain the illegal use of the mails is subject to that Act. Cates v. Haderlein, 342 U. S. 804; Door v. Donaldson, 90 U. S. App. D. C. 188, 195 F. 2d 764. Section 9 of the Act furnishes some safeguards. It provides, "In the exercise of any power or authority—

"(a) In General.—No sanction shall be imposed or substantive rule or order be issued except within jurisdiction delegated to the agency and as authorized by law."

Impounding one's mail is plainly a "sanction," for it may as effectively close down an establishment as the sheriff himself. The power to impound at the commencement of the administrative proceedings is not expressly delegated to the Post Office, as I have said. It carries such a grave threat, it touches so close to First, Fifth, and Sixth Amendment rights, it has such serious possibilities of abuse (unless carefully restricted) that I am reluctant to read it into the statute. I, therefore, strongly incline to the view that the interim order from which petitioner seeks relief is invalid. It seems to be a final order and there is no apparent administrative remedy.

It is clear, I think, that petitioner is entitled to judicial review of the interim order. Section 10 of the Administrative Procedure Act provides:

> "(a) Right of Review.—Any person suffering legal wrong because of any agency action, or adversely affected or aggrieved by such action within the meaning of any relevant statute, shall be entitled to judicial review thereof.
>
> . . . . . .
>
> "(c) Reviewable Acts.—Every agency action made reviewable by statute and every final agency action for which there is no other adequate remedy in any court shall be subject to judicial review. Any preliminary, procedural, or intermediate agency action or ruling not directly reviewable shall be subject to review upon the review of the final agency action. . . ."

The interim order should be lifted only if it is invalid. If it is lifted, the issue of its validity will become moot, see Myers v. Cheeseman, *supra*. The case is now pending in the Court of Appeals and will be decided by that court in due course. The Department of Justice advises me that a final administrative order will be made very shortly, probably in two or three weeks. If that order should be favorable to petitioner, she would, of course, receive all her mail and the case would become moot. If the order is adverse to her, its validity can be reviewed by the Court of Appeals. I was assured on oral argument that any mail intercepted under the interim order would be impounded and kept separate from the other mail that is subject to the final administrative order, until judicial review is had, so that the separate issue of the validity of the interim order will be open on review. There is thus no danger that the issue presented by this application will become moot, if the decision of the Post Office goes against petitioner.

Petitioner presents a strong case for interim relief. Litigation, however, often places a heavy burden on the citizen; and he must frequently suffer intermediate inconveniences or losses to win his point. Since petitioner will, in due course, get judicial review of the important question of law tendered and since the action I am asked to take runs counter to the requirements of orderly procedure, I will deny the relief asked.

Application denied.